

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHANNON BRONZICH and  
CATHLEEN FARRIS, individually  
and on behalf of a Class of similarly  
situated Washington residents,

Plaintiffs,

v.

PERSELS & ASSOCIATES, LLC, et  
al.,

Defendants.

NO: 10-CV-0364-TOR

ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT AGREEMENT

BEFORE THE COURT is Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (ECF No. 273). This matter was heard without oral argument on September 10, 2012. The Court has reviewed the motion and the parties' supplemental submission, and is fully informed. For the reasons discussed below, the Court will preliminarily approve the proposed settlement.

## BACKGROUND

This is a class action lawsuit alleging violations of Washington's Debt Adjusting Act ("DAA") and the Washington Consumer Protection Act ("CPA"). Plaintiffs allege that Defendants systematically charged Washington consumers illegal debt settlement fees from September 2006 to present. This Court previously ruled that the DAA's statutory fee restrictions apply to Defendants notwithstanding the fact that their services are purportedly provided by licensed attorneys. ECF No. 98, 155. Following that ruling, the parties engaged in two separate mediation sessions. The latter session produced a proposed settlement, which the parties now ask the Court to preliminarily approve.

## DISCUSSION

### **A. Standard for Preliminary Approval of Class Action Settlement**

A court must perform two separate inquiries when evaluating a motion for preliminary approval of a proposed class action settlement reached prior to class certification. First, a court must make a preliminary determination that certification of the proposed class is appropriate under Rule 23(a) and one of the subsections of Rule 23(b). *Manual for Complex Litigation* (Fourth) § 21.632 (2008). Second, a court "must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms [under Rule 23(e)(2)] and must direct the preparation of notice of the certification, proposed settlement, and

1 date of the final fairness hearing.” *Id.* In making this latter determination, a  
 2 court’s role is to ensure that the proposed settlement falls within the “range of  
 3 reasonableness” under Rule 23(e)(2) such that proceeding with notice to class  
 4 members and a formal fairness hearing would be worthwhile. 4 *Newberg on Class*  
 5 *Actions* § 11:26 (4th ed. 2002).

### 6 **B. Appropriateness of Class Certification**

7 Class certification is governed by Rule 23(a) and (b) of the Federal Rules of  
 8 Civil Procedure. Under Rule 23(a), a plaintiff seeking class certification must  
 9 demonstrate that “(1) the class is so numerous that joinder of all members is  
 10 impracticable; (2) there are questions of law or fact common to the class; (3) the  
 11 claims or defenses of the representative parties are typical of the claims or defenses  
 12 of the class; and (4) the representative parties will fairly and adequately protect the  
 13 interests of the class.” Fed. R. Civ. P. 23(a). When presented with a motion to  
 14 certify, a court must perform a “rigorous analysis” to determine whether each of  
 15 these prerequisites has been satisfied. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161  
 16 (1982). “Frequently that ‘rigorous analysis’ will entail some overlap with the  
 17 merits of the plaintiff’s underlying claim.” *Wal-Mart Stores, Inc. v. Dukes*, ---  
 18 U.S. ---, 131 S. Ct. 2541, 2551 (2011); *see also Ellis v. Costco Wholesale Corp.*,  
 19 657 F.3d 970, 981 (9th Cir. 2011) (noting that a district court *must* consider the  
 20 merits of an underlying claim to the extent that they overlap with the Rule 23(a)

1 requirements).

2 A class action plaintiff must also demonstrate that certification is appropriate  
3 under Rule 23(b). Where, as in this case, a plaintiff seeks certification of a so-  
4 called “damages class” under Rule 23(b)(3), he or she must demonstrate that (1)  
5 “questions of law or fact common to class members predominate over any  
6 questions affecting only individual members;” and (2) “a class action is superior to  
7 other available methods for fairly and efficiently adjudicating the controversy.”  
8 Fed. R. Civ. P. 23(b)(3). As the party seeking certification, the plaintiff bears the  
9 burden of establishing that these requirements have been satisfied. *Mazza v. Am.*  
10 *Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012).

11 In this case, Plaintiffs have sought preliminary certification of a class  
12 consisting of:

13 All natural persons who entered into retainer agreements with Griffith &  
14 Ruther, LLC, Ruther & Associates, LLC, or Persels & Associates, LLC,  
15 between September 2, 2006 and the date of Preliminary Approval of the  
Settlement Agreement and who were residents of Washington at the time of  
entering into such agreements.

16 ECF No. 274, Exhibit 1, at 11. For the reasons discussed below, the court  
17 preliminarily concludes that certification of this class is appropriate under Rule  
18 23(a) and Rule 23(b)(3) as to Plaintiffs’ claims for violations of the DAA and *per*

1 se violations of the CPA only.<sup>1</sup>

2 1. Rule 23(a) Prerequisites

3 i. *Numerosity*

4 Rule 23(a)(1) requires that a proposed class must be “so numerous that  
5 joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “Whether  
6 joinder would be impracticable depends upon the facts and circumstances of each  
7 case and does not, as a matter of law, require any specific minimum number of  
8 class members.” *Smith v. Univ. of Washington Law School*, 2 F. Supp. 2d 1324,  
9 1340 (W.D. Wash. 1998). In general, however, a class consisting of forty or more  
10 members is presumed to be sufficiently numerous. *In re Washington Mut.*  
11 *Mortgage-Backed Secs. Litig.*, 276 F.R.D. 658, 665 (W.D. Wash. 2011).

12 The parties assert that the proposed class of plaintiffs in this case consists of  
13 approximately 2,938 Washington consumers. On the facts of this case, joinder of

14 \_\_\_\_\_  
15 <sup>1</sup> Plaintiffs have also asserted causes of action for common law aiding and abetting,  
16 breach of fiduciary duty, and injunctive relief. Pls.’ First Am. Compl., ECF No.  
17 27, at ¶¶ 80-92. These claims are not specifically addressed in Plaintiffs’ motion  
18 and do not appear to be encompassed within the parties’ proposed Settlement  
19 Agreement. Accordingly, the court will not include these claims among those  
20 being pursued by the class.

1 2,938 individual claims would be impracticable. Accordingly, the court  
2 preliminarily concludes that the numerosity requirement has been satisfied.

3 ii. *Commonality*

4 Rule 23(a)(2) requires that “there are questions of law or fact common to the  
5 class.” Fed. R. Civ. P. 23(a)(2). For purposes of this rule, “[c]ommonality exists  
6 where class members’ situations share a common issue of law or fact, and are  
7 sufficiently parallel to insure a vigorous and full presentation of all claims for  
8 relief.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir.  
9 2010) (internal quotation and citation omitted). This requirement serves to ensure  
10 that class-wide adjudication will “generate common *answers* apt to drive the  
11 resolution of the litigation.” *Dukes*, 131 S. Ct. at 2551 (emphasis in original)  
12 (internal quotation and citation omitted).

13 Like its companion case currently pending in this court, this case presents  
14 one overarching question of law and fact common to all class members: whether  
15 Defendants charged (1) an initial fee in excess of 25.00; and/or (2) a service fee in  
16 excess of 15% of any one individual payment. *See Brown v. Consumer Law*  
17 *Associates, LLC.*, --- F.R.D. ---, 2012 WL 2236629 at \*9-\*10 (E.D. Wash. June 15,  
18 2012). This single question is dispositive for purposes of establishing liability  
19 under the DAA and CPA. Accordingly, the court preliminarily concludes that the  
20 commonality requirement has been satisfied.

1                   iii. *Typicality*

2           Rule 23(a)(3) provides that “the claims or defenses of the representative  
3 parties [must be] typical of the claims or defenses of the class.” Fed. R. Civ. P.  
4 23(a)(3). This requirement serves to ensure that “the interest of the named  
5 representative aligns with the interests of the class.” *Wolin*, 617 F.3d at 1175.  
6 Factors relevant to typicality include “whether other members have the same or  
7 similar injury, whether the action is based on conduct which is not unique to the  
8 named plaintiffs, and whether other class members have been injured by the same  
9 course of conduct.” *Ellis*, 657 F.3d at 984. In other words, “[t]ypicality refers to  
10 the nature of the claim or defense of the class representative, and not to the specific  
11 facts from which it arose or the relief sought.” *Id.*; *see also Stearns v. Ticketmaster*  
12 *Corp.*, 655 F.3d 1013, 1019 (9th Cir. 2011) (“The typicality requirement looks to  
13 whether the claims of the class representatives are typical of those of the class, and  
14 is satisfied when each class member’s claim arises from the same course of events,  
15 and each class member makes similar legal arguments to prove the defendant’s  
16 liability.”).

17           Here, named class representatives Shannon Bronzich and Cathleen Farris  
18 have alleged that Defendants violated the DAA and CPA by charging them (1)  
19 initial fees in excess of \$25.00; and (2) service fees in excess of 15% of any one  
20 individual payment. EFC No. 27 at ¶¶ 74-79. These claims are typical of—

indeed, identical to—the claims of all other proposed class members. Accordingly, the Court preliminarily concludes that the typicality requirement has been satisfied.

iv. *Adequacy of Representation*

Rule 23(a)(4), which is the final prerequisite for class certification, requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requirement applies to both the named plaintiff and to his or her attorney. “To determine whether named plaintiffs will adequately represent a class, courts must resolve two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members[;] and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Ellis*, 657 F.3d at 985.

Regarding representation by class counsel, the court finds that Plaintiffs’ counsel are capable of fairly and adequately representing the entire class. These attorneys have extensive experience in prosecuting class actions in the consumer protection context and have served capably as class counsel in a companion case involving alleged violations of the DAA and CPA. Accordingly, the court preliminarily concludes that Plaintiffs’ counsel are qualified to serve as class counsel.

With regard to representation of the class by the named class representatives, the court finds that Shannon Bronzich and Cathleen Farris are capable of fairly and

adequately protecting the interests of all class members. Although this Court has previously drawn a distinction between current clients and former clients for purposes of the Rule 23(a)(4) analysis in a companion case (*see Brown*, --- F.R.D. ---, 2012 WL 2236629 at \*12), it is unnecessary to draw a similar distinction here. Unlike the defendants' former clients in the companion case, the former clients in this case have not sought to declare their contracts with Defendants void *ab initio* and to recover all fees not previously distributed to creditors. *Cf. Brown*, --- F.R.D. ---, 2012 WL 2236629 at \*12). Rather, the former clients in this case have merely sought to recover a portion of the fees which they paid to Defendants—without invalidating their contracts. Moreover, the proposed Settlement Agreement allows current clients to recover certain fees paid to Defendants while still maintaining their enrollment in Defendants' debt settlement program. Accordingly, this case does not create a potential conflict of interest between current and former clients, and the named class representatives may therefore represent both groups.

## 2. Rule 23(b)(3) Requirements

### i. *Do Common Questions of Law or Fact Predominate?*

Under Rule 23(b)(3), the relevant inquiry is whether questions of law or fact common to all class members *predominate* over individualized questions. *See Wolin*, 617 F.3d at 1172 (“While Rule 23(a)(2) asks whether there are issues

1 common to the class, Rule 23(b)(3) asks whether these common questions  
2 predominate.”). Although Rule 23(a)(2) and Rule 23(b)(3) both address  
3 commonality, “the 23(b)(3) test is ‘far more demanding,’ and asks ‘whether  
4 proposed classes are sufficiently cohesive to warrant adjudication by  
5 representation.’” *Id.* (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623-  
6 24 (1997)).

7 Here, questions of law and fact common to the class members clearly  
8 predominate over individualized questions. As discussed above, the dispositive  
9 question for purposes of establishing liability is whether class members were  
10 charged (1) an initial fee in excess of \$25.00; and/or (2) service fees exceeding  
11 15% of any one individual payment. This question is common to all class  
12 members and can be answered quickly and decisively by examining each class  
13 member’s billing history. At bottom, the only individualized questions presented  
14 in this case are questions relating to damages—*i.e.*, the amount that each class  
15 member was charged in illegal fees. Once again, these questions can be answered  
16 by examining each class member’s billing history. Accordingly, the Court  
17 preliminarily concludes that the predominance requirement has been satisfied.

18 ii. *Is Class Adjudication Superior to Individual Actions?*

19 In considering whether class adjudication is superior to separate individual  
20 actions, a court must determine “whether the objectives of the particular class

1 action procedure will be achieved in the particular case.” *Hanlon v. Chrysler*  
2 *Corp.*, 150 F.3d 1011, 1023 (9th Cir. 1998). In general, a court conducting this  
3 superiority analysis must consider, *inter alia*, (1) the interests of individual class  
4 members in pursuing their claims separately; (2) the extent of any existing  
5 litigation concerning the same subject-matter; (3) the desirability of concentrating  
6 the litigation in a particular forum; and (4) the feasibility of managing the case as a  
7 class action. Fed. R. Civ. P. 23(b)(3)(A)-(D). When certification is sought for  
8 purposes of settlement only, however, a court need not consider the feasibility of  
9 managing the case as a class action under Rule 23(b)(3)(D). *Amchem Prods., Inc.*  
10 *v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-  
11 only class certification, a district court need not inquire whether the case, if tried,  
12 would present intractable management problems, for the proposal is that there be  
13 no trial.”) (citation omitted).

14 The Court finds that adjudication of this case on a class-wide basis is  
15 superior to maintaining individual actions. First, the Court is not aware of any  
16 other litigation concerning the same subject-matter between Washington residents  
17 and these Defendants. Second, concentrating this litigation in the Eastern District  
18 of Washington is appropriate given that the proposed class members are all  
19 residents of the State of Washington. Finally, it does not appear that class  
20 members will have a significant interest in litigating their claims separately.

1 Because the potential value of each class member's claim is relatively small, the  
2 cost of litigating individual claims would likely exceed the value of any potential  
3 recovery. In this circumstance, class-wide adjudication is generally preferable.  
4 *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1191 (9th Cir. 2001)  
5 (noting that certification is generally proper when class members will be "unable to  
6 pursue their claims on an individual basis because the cost of doing so exceeds any  
7 recovery they might secure"). Accordingly, the Court preliminarily concludes that  
8 the superiority requirement has been satisfied.

### 9 **C. Preliminary Assessment of the Proposed Settlement Terms**

10 Rule 23(e)(2) requires the Court to ensure that a proposed class action  
11 settlement is fair, adequate and reasonable prior to granting formal approval. Fed.  
12 R. Civ. P. 23(e)(2). At this preliminary juncture, the Court's role is to verify that  
13 the proposed settlement falls within the "range of reasonableness" contemplated by  
14 Rule 23(e)(2). 4 *Newberg on Class Actions* § 11:26 (4th ed. 2002). For the  
15 reasons discussed below, the Court preliminarily concludes that the proposed  
16 settlement satisfies the requirements of Rule 23(e).

#### 17 *1. The Settlement Agreement's Basic Terms*

18 In general terms, the proposed Settlement Agreement calls for Defendants to  
19 pay \$2.2 million to settle all claims. Of this sum, \$1.54 million will be distributed  
20 directly to class members in proportionate shares. Class counsel will receive not

1 more than \$650,000 for their efforts in litigating the case. Named Plaintiffs  
2 Shannon Bronzich and Cathleen Farris will receive a stipend of \$5,000 each as  
3 compensation for serving as class representatives. In addition, Defendants will  
4 modify their fee collection practices as to existing Washington customers. With  
5 the limited reservations addressed below, the Court preliminarily concludes that  
6 these terms fall within the range of reasonableness contemplated by Rule 23(e).

7 *2. Cy Pres Provision*

8 The parties' Settlement Agreement calls for the creation of a *cy pres* fund  
9 into which all non-negotiated or returned checks will be deposited in the event that  
10 the aggregate value of such checks amounts to less than fifty thousand dollars  
11 (\$50,000). ECF No. 274, Exhibit 1, at ¶ 8. The original version of the agreement  
12 specified that "[t]he *cy pres* fund [would] be donated to the Legal Foundation of  
13 Washington for services associated with assisting low income individuals  
14 struggling with debt." ECF No. 274, Exhibit 1, at ¶ 8. The parties have since  
15 amended the agreement to direct the *cy pres* fund to the "Northwest Justice Project  
16 for the purpose of assisting and educating Washington residents with respect to  
17 practices of the debt settlement industry and issues relating to the Washington Debt  
18 Adjusting Act." ECF No. 282-1. With this amendment, the Court preliminarily  
19 concludes that the proposed *cy pres* provision adequately reflects (1) the objectives  
20 of the consumer protection statutes upon which this lawsuit is based, and (2) the

1 interests of the absent class members. *See Dennis v. Kellogg Co.*, --- F.3d ---, 2012  
2 WL 3800230 at \*5 (9th Cir. Sept. 4, 2012) (emphasizing that Rule 23(e)(2)  
3 requires “a driving nexus between the plaintiff class and the *cy pres* beneficiaries).

### 4 3. *Formula for Calculating Damages Awards*

5 The Settlement Agreement provides that each class member’s share of  
6 recovery shall be calculated according to the formula  $(A \div B) \times C$ , where “A”  
7 represents the total fees paid by the class member pursuant to his or her debt  
8 settlement contract with Defendants; “B” represents the aggregate total of all such  
9 fees paid by class members (\$4,606,896.57); and “C” represents the negotiated  
10 class payment in the amount of \$1,540,000. As the parties correctly note, this  
11 formula allows each class member to recover a share of the class payment in  
12 proportion to the fees which he or she actually paid to Defendants. Because the  
13 amount of fees paid by each class member varies widely, a system of proportionate  
14 recovery seems appropriate.

15 One potential problem with the proposed formula, however, is that it tends  
16 to favor class members who either fully or substantially completed Defendants’  
17 debt settlement program over those who dropped out early. In other words, the  
18 proposed formula results in class members whose debts were successfully settled  
19 receiving the same proportionate recovery as class members who dropped out of  
20 the program before any of their debts were settled. This causes a potential

1 inequity. Accordingly, the Court encourages the parties to consider revising their  
2 damages formula to account for not only the amount of fees paid by each class  
3 member, but also the benefit flowing to each class member from the payment of  
4 those fees.

5 *4. Relief for Current Clients*

6 The parties assert that the Settlement Agreement “provides substantial  
7 injunctive relief” to class members who are currently enrolled in Defendants’ debt  
8 settlement program by (1) prohibiting Defendants from collecting any additional  
9 fees “unless and until it sends payment to the client’s creditor;” and (2) capping the  
10 fees that Defendants may charge their current Washington clients to fifteen percent  
11 (15%) of the amount of any debt that is settled for the client. ECF No. 273 at 10.  
12 Having reviewed the language of the Settlement Agreement, the Court finds that  
13 the nature of the relief afforded to Defendants’ current clients has been sufficiently  
14 explained.

15 For purposes of clarification, however, the Court notes that the relief  
16 specified in the Settlement Agreement is not “injunctive” in nature. Rather, the  
17 Settlement Agreement merely calls for a constructive amendment to the fee  
18 agreements between Defendants and their existing Washington customers.  
19 Notably, the agreement does not purport to enjoin Defendants from charging *future*  
20 clients fees which may violate the DAA. ECF No. 274 at 22 (“The changes in fee

1 structure set forth in paragraph 5(e)(1) and (e)(2) are applicable only to current  
2 clients of P&A residing in the State of Washington as of the Effective Date . . . and  
3 shall not apply to any client who engages P&A after the Effective Date.”). This  
4 distinction is important, as the parties have not sought certification of—and the  
5 Court has therefore not certified—an injunctive class under Rule 23(b)(2).

#### 6 **D. Approval of the Proposed Notice Plan**

7 Under Rule 23(c)(2), the Court must “direct to class members the best notice  
8 that is practicable under the circumstances, including individual notice to all  
9 members who can be identified through reasonable effort.” Fed R. Civ. P.  
10 23(c)(2). The best notice practicable is that which is “reasonably calculated, under  
11 all the circumstances, to apprise interested parties of the pendency of the action  
12 and afford them an opportunity to present their objections.” *Mullane v. Cent.*  
13 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

14 Having reviewed the proposed notice program (ECF No. 274, Exhibit B),  
15 the court finds that it satisfies this standard. Notably, the notice program provides  
16 for individual notice via both first-class mail and electronic mail using the most  
17 recent contact information available. The notice also specifies that class members  
18 will have seventy-five (75) days from the date of the initial mailing within which  
19 to exclude themselves from the class and/or to object to the terms of the proposed  
20

1 settlement. The notice itself is written in plain language that advises class  
2 members of their rights in a clear and concise manner.

3 Accordingly, the Court approves the proposed notice program and directs  
4 that it be implemented forthwith, subject to Class Counsel making the following  
5 changes:

- 6 1. **Section 7** – CHANGE “Legal Foundation of Washington” to  
7 “Northwest Justice Project.”
- 8 2. **Section 7** – INSERT the word “preliminarily” between the words  
9 “been” and “approved,” such that the latter portion of the first  
10 sentence reads “. . . which distribution plan has been preliminarily  
11 approved by the Court.”
- 12 3. **Section 14, ¶ 3** – ADD the following mailing address and designate it  
13 as such:

14 Clerk of the Court  
15 United States District Court for the Eastern District of Washington  
16 P.O. Box 1493  
Spokane, WA 99210

#### 17 **E. Appointment of Class Representatives**

18 The Court hereby provisionally appoints Plaintiffs Shannon Bronzich and  
19 Cathleen Farris as named class representatives.

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1       **F. Appointment of Class Counsel**

2           The Court hereby provisionally appoints the following attorneys as class  
3 counsel:

4           Darrell W. Scott  
5           Matthew J. Zuchetto  
6           The Scott Law Group, PS  
7           926 W. Sprague Ave., Suite 583  
8           Spokane, WA 99201

9           Toby J. Marshall  
10          Terrell Marshall Daudt & Willie PLLC  
11          936 North 34th Street, Suite 400  
12          Seattle, WA 98103

13          The Court further appoints the Scott Law Group, PS, as the Settlement  
14 Administrator.

15       **G. Final Fairness Hearing**

16           The Court hereby schedules a final fairness hearing for **January 23, 2013,**  
17 **at 9:00 a.m.,** at the U.S. District Courthouse in Spokane.

18       **ACCORDINGLY, IT IS HEREBY ORDERED:**

19           1.     The Court preliminarily approves the Settlement Agreement and the  
20 terms set forth therein—including the relief afforded the Settlement Class, the  
stipends to the Class Representatives, and the payment of attorneys' fees and costs  
to Class Counsel (including costs for notice and settlement administration)—as  
being fair, reasonable and adequate. The Settlement Agreement is the result of  
arm's-length negotiations between experienced attorneys who are familiar with

1 class action litigation in general and with the legal and factual issues of this case in  
2 particular.

3       2. Pursuant to Fed. R. Civ. P. 23(b)(3), the Court conditionally certifies  
4 for settlement purposes only the following Class: “All natural persons who entered  
5 into retainer agreements with Griffith & Ruther, LLC, Ruther & Associates, LLC  
6 or Persels & Associates, LLC between September 2, 2006, and the date of  
7 Preliminary Approval of the Settlement Agreement and who were residents of  
8 Washington at the time of entering into such agreements.”

9       3. A final approval hearing (“Final Fairness Hearing”), for purposes of  
10 determining whether the settlements should be finally approved, shall be held  
11 before this Court on **January 23, 2013, at 9:00 a.m.**, in the courtroom of the  
12 Honorable Thomas O. Rice at 920 West Riverside Avenue, Courtroom 902,  
13 Spokane, Washington, 99201. At the hearing, the Court will hear arguments  
14 concerning whether the proposed settlement on the terms and conditions provided  
15 for in the Settlement Agreement should be granted final approval by the Court as  
16 fair, reasonable and adequate.

17       4. The Court approves, as to form and content (with the changes noted in  
18 Section D, supra), the Class Notice attached to the Settlement Agreement as  
19 Exhibit B to be sent to the Class Members. The approved notice advises Class  
20 Members of their rights, including the right to object to or exclude themselves

1 from the Settlement Agreement, and explains the manner in which such rights are  
2 to be exercised. In addition, the Court finds that distribution of the Class Notice  
3 substantially in the manner set forth in Paragraph 5 of this order will meet the  
4 requirements of due process and applicable law, will provide the best notice  
5 practicable under the circumstances, and shall constitute due and sufficient notice  
6 to all individuals entitled thereto.

7 5. The procedure for distributing the Class Notice shall be as follows:

8 (a) Within ten (10) business days of the entry of this Order,  
9 Defendants shall produce a list to the Settlement Administrator that contains the  
10 following information for each Class Member: name, last known mailing address,  
11 last known email address, plan reference number, date of retainer agreement, total  
12 amount of fees paid to Persels & Associates (not including any fees that were  
13 subsequently refunded, and status as a current or former client of Persels &  
14 Associates, for every potential member of the Class; and

15 (b) No later than thirty (30) days<sup>2</sup> after entry of this Order, the  
16 Settlement Administrator shall issue notice to all proposed Class Members in the  
17 form approved in ¶ 4 of this Order. Notice shall be sent directly through first-class  
18 mail and, where possible, by electronic mail using the most recent contact  
19

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20 <sup>2</sup> Fed. R. Civ. P. 6 provides the method for computing time herein.

1 information available. The date on which the notice is sent shall be deemed the  
2 Initial Notice Mailing Date.

3 6. No later than ninety (90) calendar days after entry of this Order, Class  
4 Counsel shall file a motion requesting that the Court grant final approval of the  
5 Settlement Agreement, including the payment of attorneys' fees and expenses, and  
6 enter final judgment in the action.

7 7. Any potential Class Member may elect to be excluded from the  
8 Settlement and from the Class by opting out of the Class. Any Class Member who  
9 desires to be excluded from the Class must no later than seventy-five (75) calendar  
10 days after the Initial Notice Mailing Date provide to the Settlement Administrator  
11 by mail or email a notice of the election to be excluded, with copies by mail or  
12 email to Class Counsel and to Defendants' counsel. For notices of exclusion sent  
13 by mail, the date of the postmark on the envelope shall be the exclusive means of  
14 determining whether a request for exclusion has been timely submitted. Notices of  
15 exclusion by email shall be deemed timely if sent before midnight in the sender's  
16 time zone on the exclusion deadline date. The notice form approved in ¶ 4 of this  
17 Order provides instructions regarding how to make objections.

18 8. No later than eighty-two (82) calendar days after the Initial Notice  
19 Mailing Date, Class Counsel shall file under seal and serve a declaration  
20

1 identifying all individuals who have made a timely and valid request for exclusion  
2 from the Settlement Agreement.

3       9. Any Class Member who intends to object to the fairness,  
4 reasonableness, or adequacy of the Settlement must notify the Court, Class  
5 Counsel, and the Settlement Administrator in writing, sent by mail or email on or  
6 before the date specified in the Notice of Proposed Class Action Settlement, of the  
7 Class Member's intention to object to the Settlement. The notice of objection shall  
8 include: (a) the Class Member's full name, address, and telephone number, (b) a  
9 written statement of all objections, (c) a statement regarding whether the objecting  
10 Class Member intends to appear at the Fairness Hearing. For notices of objection  
11 sent by mail, the date of the postmark on the envelope shall be the exclusive means  
12 of determining whether an objection has been timely submitted. Notices of  
13 objection by email shall be deemed timely if sent before midnight in the sender's  
14 time zone on the objection deadline date. The notice form approved in ¶ 4 of this  
15 Order provides instructions regarding how to make objections.

16       10. The Parties shall submit any responses to objections no later than  
17 eighty-two (82) calendar days after the Initial Notice Mailing Date.

18       11. At the Final Fairness Hearing, the Court shall determine whether the  
19 proposed Settlement Agreement shall be finally approved.  
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12. If final approval does not occur as to the Settlement Agreement, or if the Settlement Agreement is terminated or canceled pursuant to its terms, the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of that agreement, and that agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be admitted, referred to or utilized by any party for any purpose whatsoever.

13. Plaintiffs' prior Motion to Certify Class (ECF No. 162), and Defendants' Joint Motion to Strike (ECF No. 236), are both **DENIED AS MOOT**, with leave to renew should final approval of the settlement not occur.

The District Court Executive is hereby directed to enter this Order and provide copies to counsel.

**DATED** this 7<sup>th</sup> day of September, 2012.

*s/ Thomas O. Rice*

THOMAS O. RICE  
United States District Judge